United States Copyright Office
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May 22, 2013

David M. Lilenfeld
Lilenfeld, PC
2970 Peachtree Road NW, Suite 530
Atlanta, GA 30305

RE: G-girl
Correspondence ID: 1-BZEVNQ

Dear Mr. Lilenfeld:

The Review Board of the United States Copyright Office is in receipt of your second appeal of the decision of the Office to refuse registration of the work entitled "G-girl," submitted by you on September 19, 2012 on behalf of your client, Sean Peacock. The Board has carefully examined the application, the deposit, and all correspondence concerning this application and, for the reasons stated below, hereby affirms the denial of registration. This decision constitutes final agency action in this matter. 37 C.F.R. §202.5(g).

I. DESCRIPTION OF THE WORK

"G-girl" consists of the stylized letter "G", which you represent is the logo for the University of Georgia, followed by the letters "irl" in italicized script font to form the word "Girl." You represent that the combination of the "G" logo followed by "irl" presents the message "Georgia Girl," as in a University of Georgia girl. The "G-girl" image is reproduced below from the submitted deposit copy.



II. THE ADMINISTRATIVE RECORD

On February 13, 2012, you were notified that the Copyright Office could not register "G-girl" because the work lacked the authorship necessary to support a copyright claim. Letter from Registration Specialist Beth Garner to David Lilenfeld of 2/13/12, at 1. In a letter dated March 21, 2012, you requested reconsideration of the Office's refusal to register the work, setting forth your reasons as to why the work was copyrightable and should be registered, as required by 37 C.F.R. §202.5(c).

In a letter dated June 22, 2012, the Office again refused to register the work, concluding that there were "no elements or features embodied in this work, either alone or in combination, upon which a copyright registration is possible..." Letter from Attorney-Advisor Stephanie Mason to David Lilenfeld of 2/22/12, at 3.

In a letter dated September 19, 2012, you requested that the Office reconsider for a second time its refusal to register the copyright claim in "G-Girl." Letter from David Lilenfeld to Copyright RAC Division of 9/19/12, at 1. In support of your position that the work should be registered, you offer three primary arguments. First, you assert that "G-girl" incorporates both the primary symbolic meaning of the University of Georgia logo letter "G," and the secondary meaning of the letter "G" as it relates to spelling the word "girl." Second, you assert that the applicant, Mr. Peacock, carefully selected and combined the particular elements of the University of Georgia logo "G" with the letters "irl" to create a meaning that is not present when the separate and independent elements stand alone. Third, you claim that Mr. Peacock's work is more complex than the works involved in *John Muller & Co. v. New York Arrows Soccer Team, Inc.*, 802 F.2d 989 (8th Cir. 1986); *Magic Marketing, Inc. v. Mailing Services of Pittsburgh, Inc.*, 634 F. Supp. 769 (W.D. Pa. 1986); *Forstmann Woolen Co. v. J.W. Mays, Inc.*, 80 F. Supp. 964 (E.D.N.Y. 1950); *The Homer Laughlin China Co. v. Oman*, 22 U.S.P.Q. 2d 1074 (D.D.C. 1991), and; *Jon Woods Fashions, Inc. v Curran*, 8 U.S.P.Q. 1870 (S.D.N.Y. 1988), cases which were cited by the Registration and Recordation Program as supportive of the decision to refuse registration of "G-girl."

III. DECISION

A. The Legal Framework

All copyrightable works must qualify as "original works of authorship fixed in any tangible medium of expression." 17 U.S.C. §102(a). As used with respect to copyright, the term "original" consists of two components: independent creation and sufficient creativity. *Feist Publications, Inc. v. Rural Telephone Service Co.* 499 U.S. 340, 345 (1991). First, the work must have been independently created by the author, *i.e.*, not copied from another work. Second, the work must possess sufficient creativity. While only a modicum of creativity is necessary to establish such creativity, the Supreme Court has ruled that some works (such as a telephone directory at issue in the case) fail to meet the standard. The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimus* quantum of creativity." *Id.* at 363. There can be no copyright in a work in which "the creative spark is utterly lacking or so trivial as to be nonexistent." *Id.* at 359; *see, also* 37 C.F.R. §202.10(a) ("In order to be acceptable as a pictorial, graphic, or sculptural work, the work must embody some creative authorship in its delineation or form.").

The Copyright Office's regulations implement the long-standing requirements of originality and creativity set forth in the law and, subsequently, the *Feist* decision. The regulations prevent registration of "[w]ords and short phrases such as names, titles, slogans; familiar symbols or designs; [and] mere variations of typographic ornamentation, lettering, or coloring" 37 C.F.R. 202.1(a). In *Kitchens of Sara Lee v. Nifty Foods Corp.*, 266 F.2d 541, 544 (2d Cir. 1959), the Court concluded that the Office's regulatory bars to registering short phrases and typographic ornamentation was a "fair summary of the law."

Of course, some combinations of common or standard design elements may contain sufficient creativity with respect to how they are combined or arranged to support a copyright. *See, Feist,* at 358 (the Copyright Act "implies that some 'ways' [of selecting, coordinating, or arranging uncopyrightable material] will trigger copyright, but that others will not." The determination of copyrightability rests on whether the selection, coordination, or arrangement was done in "such a way" as to result in copyrightable authorship). However, not every combination or arrangement will be sufficient to meet this grade. For example, the Eighth Circuit upheld the Copyright Office's refusal to register a simple logo consisting of four angled lines which formed an arrow and the word "Arrows" in a cursive script below the arrow. *John Muller & Co*, 802 F. 2d 989 (8th Cir. 1986). *See also, Satava v. Lowry*, 323 F. 2d 805, 811 (9th Cir. 2003)("It is true, or course, that a *combination* of unprotectible elements may qualify for copyright protection. But it is not true that any combination of unprotectible elements automatically qualifies for copyright protection. Our case law suggests, and we hold today, that a combination of unprotectible elements is eligible for copyright protection only if those elements are numerous enough and their selection and arrangement original enough that their combination constitutes an original work of authorship.")(citations omitted)(emphasis in original).

Copyright Office Registration Specialists (and the Board, as well) do not make aesthetic judgments in evaluating the copyrightability of particular works. Likewise, they are not influenced by the attractiveness of a design, it uniqueness, its visual effect or appearance, its symbolism, the time and effort it took to create, or its commercial success in the marketplace. The fact that a work consists of a unique or distinctive shape or style for purposes of aesthetic appeal does not automatically mean that the work, as a whole, constitutes a copyrightable "work of art."

B. Analysis of the work "G-girl"

After carefully examining the work "G-girl" and applying the legal standard discussed above, the Board determines that "G-girl" fails to satisfy both the requirements of originality and creativity. You state in your letter that the logo "G" "primarily means 'University of Georgia" or 'Georgia Bulldogs'," and that "the (logo) "G" in the work has been the logo of the University of Georgia Bulldogs sports teams since the 1960s." Letter from David Lilenfeld to Copyright RAC Division, 9/19/13, at 2. It is, therefore, not original

to Mr. Peacock. The logo "G" is the primary element to the work, without which the work would simply spell the word "Girl" in cursive script. The lack of originality is confirmed by your submission of the license plate designs from other universities that incorporate the school athletics logo with the word "girl." The fact that "G-girl" incorporates the logo "G" into the word "girl," while the other university logos that you cited do not, is the product of happenstance that the other university names do not begin with the letter "G."

While it lacks originality in its most critical element, "G-girl" also lacks sufficient creativity to sustain a registration. As discussed above, Copyright Office regulations do not permit registration of words, nor the typeface used to create them. "G-girl" does nothing more than spell the word "girl" in cursive script, which lacks the creativity necessary to sustain a registration. 37 C.F.R. §202.1. You argue that the combination of the "G" with the letters "irl" creates a meaning that is not present when the separate elements stand alone. The "meaning" of a work, either collectively or in its constituent elements, is not relevant to the question of copyrightability, and you do not cite any precedent to the contrary. Likewise, the "punch" that you posit is achieved by combining the logo "G" with the letters "irl" appears to be a commercial or marketplace consideration, and is not relevant to a copyright analysis.

In sum, the combination of elements that comprise G-girl, as well as their selection and arrangement, lack a sufficient level of creativity as to make them registrable under the Copyright Act. 37 C.F.R. § 202.1

IV. CONCLUSION

For the reasons stated above, the Copyright Office Review Board affirms the refusal to register the work entitled "G-girl." This decision constitutes final agency action in this matter. 37 C.F.R. §202.5(g).

Maria A. Pallante
Register of Copyrights

BY: Andrea Zizzi

Andrea K. Zizzi
Member of the Review Board